

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

BORQUEZ, *et al.*,

Defendants.

Case No. 1:23-cv-00046-NODJ-BAM (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO PROSECUTE**

(ECF No. 35)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Devonte B. Harris (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Borquez and Quevedo¹ for deliberate fabrication of evidence in violation of the Fourteenth Amendment.

On December 6, 2023, Defendants filed a motion for summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies. (ECF No. 35.) Together with the motion, Plaintiff was provided with notice of the requirements for opposing a motion for summary judgment. *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1988); *Klingele v. Eikenberry*, 849 F.2d 409, 411–12 (9th Cir. 1988). (ECF No. 36.) Pursuant to Local Rule 230(l) and Federal Rule of Civil Procedure 6(d), Plaintiff’s opposition or statement of non-opposition was due on or before January 2, 2024. The deadline

¹ Erroneously sued as “Querredo.”

1 for Plaintiff to respond to Defendants' motion for summary judgment has expired, and he has not
2 otherwise been in contact with the Court. Plaintiff will be permitted one final opportunity to
3 show cause why this action should not be dismissed without prejudice.

4 Accordingly, it is HEREBY ORDERED that Plaintiff shall show cause by WRITTEN
5 RESPONSE within **twenty-one (21) days** of service of this order why this action should not be
6 dismissed, without prejudice, for failure to prosecute. Plaintiff may comply with the Court's
7 order by filing an opposition or statement of non-opposition to Defendants' December 6, 2023
8 motion for summary judgment. **Plaintiff is warned that if he fails to comply with the Court's**
9 **order, this matter will be dismissed, without prejudice, for failure to prosecute.**

10 IT IS SO ORDERED.
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12 Dated: January 16, 2024

13 /s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE
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